

GRIC



Foundations for Prosecution Conference

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ORAL ARGUMENT: EFFECTIVE ADVOCACY

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Oral Argument: Effective Advocacy

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Overview

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Purpose of oral argument

Tips for increasing effectiveness and persuasion



Intended to provide generally applicable advice that judges and very experienced advocates have echoed over time - whether arguing a motion in trial court or a brief in appellate court

Preparing for argument

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Review record / pleadings / brief

Prepare an outline to use at argument. Outline should generally contain:

- -prepared introduction: max of 3 best points to make
- -applicable legal standards
- -relevant facts in the record with citations
- -legal authorities you and opposing counsel have relied on (case briefs/summaries if you have time)
- -prepared closing sentence or two

*681 Appendix B ORAL ADVOCACY PREPARATION CHECKLIST AND TIPS A. Oral Preparation Checklist Learn about the audience. Know the procedural rules of the tribunal. Reread written submission, adversary's submission, and all appendices. Reread and absorb the record. Know the key law and relevant provisions by memory. Prepare a roadmap. Prepare bullet-point outline, with points that must be made. Do more research. _Anticipate questions. -> Including HYPOTHETICALS 21 WESTLAW © 2020 Thomson Reuters. No claim to original U.S. Government Works. PERSUASION IS AN ART . . . BUT IT IS ALSO AN..., 61 Baylor L. Rev. 635 Practice, practice, practice. Have copies of cases, citations to record, outline, and any other materials needed for oral argument ready to bring to podium.

Sample Outline

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I. Title
1. Subject
a. Item 1: Description
b. Item 2: Description
c. Item 3: Description
2. Subject
II. Title

State v. Murray – example

Everyone will outline differently; mine may be wordier than others

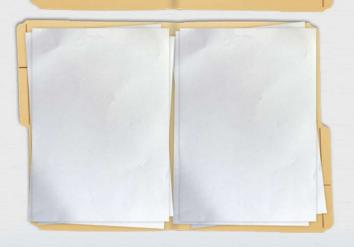
Outline operates as a safety blanket and is not meant to be read verbatim; serves as mental notes to yourself to condense down the salient cases, legal principles, and facts from your brief

The Outline

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Ideally, trim outline down to only <u>two</u> pages

Staple 2-page outline to inside of the folder



(not loose leaf papers as pictured)

Oral Argument Binder

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1 inch 3-ring binder with tabs to separate:

- Longer outline, if necessary*
- The most relevant parts of the record
- The most critical cases or constitutional provisions, statutes, etc

*Even this outline should be only 3-6 pages max; supplementary to main outline

(I also take briefs in a separate folder up to the podium)



Moot Court

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Incredibly helpful

Time & resources permitting – should try to have one within the week before OA, but not the day before

Conduct moot court like the real argument will take place (i.e., telephonic, video, in-person)

At least 2 other colleagues, with a max of 6 people (otherwise too crowded and difficult for panelists to ask questions)

Goal: participants ask questions they anticipate from the judge(s); gives the attorney arguing the case an opportunity to try out answers and receive valuable feedback

The Argument





- Preparedness is key
- Try to envision a conversation instead of a prepared speech
- Listen carefully to questions and try to answer as directly as possible
- Anticipate hypotheticals and weaknesses in your case
- Be respectful
- Never interrupt the judge(s)

Handling Specific Scenarios

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If you are asked a question and you do not know the answer:

• Be honest ("Your Honor, I do not know") and offer to submit a supplemental notice of authority or a brief if the question deals with a material issue in the case; answer as best you can

If a judge(s) is openly hostile to your argument

- Maintain composure, express understanding of the question/concerns, and remain firm on your position
- But if your position is unreasonable, don't die on a hill you don't need to die on make appropriate concessions
- Try to restate your answer with different points or in different words
- Realize there may be nothing you can do to convince the judge that your position is the correct one.

A few in the "do-not do this" category

- Do not disrespect opposing counsel (the only acceptable label for your opponent is "my opposing counsel" not "my friend," which can come off sarcastic)
- Do not tell the judge his/her question is a good one (they know this, that's why he/she asked it!)
- Do not name the judge specifically for another decision he/she wrote (this is usually awkward and he/she is not likely to recall the specific facts/ruling in the case anyway), i.e., "Judge Smith, as you eloquently wrote in *State v. X,*". Instead, simply refer to the decision itself, i.e., "In *State v. X*, this Court correctly analyzed a similar claim and held ... the circumstances here are indistinguishable from that case."
- Do not go over your allotted time without asking for permission. ("Your Honor, I can see I'm out of time. With the Court's permission, I'd like to briefly conclude with the relief the State requests.")

Exercises – Identifying Excellent Oral Advocacy

Please refer to "Appendix B" in the handout

(p. 21-22 of Baylor law review article in materials)

B. Style Tips	
Show respect.	
Beware verbal ticks like "um."	
Relaxbut do not slouch or otherwise appear disrespectful.	
Make good eye contact.	
Do not read. If the advocate must glance at notes, do it quickly from time to time.	
Speak loudly enough for judges to hear.	
Use good voice inflection.	
Give no false praise ("that was an excellent question, sir," for example).	
Watch non-verbal reactions (such as swaying, rolling eyes, looking at ceiling, hand gestures, facial expressions). ²⁷⁶	
Speak slowly so the listeners can follow the chain of logic.	
*682Pause periodically, so that judges can ask questions without feeling that they are interrupting.	
If standing, no wandering around while speaking; stay behind the podium.	
No feet tapping.	
No fidgeting.	
Be honest!	
Above all, it is essential to speak with conviction.	

Exercises – Identifying Excellent Oral Advocacy

Case Example #1:

State v. VanWinkle

http://supremestateaz.granic us.com/player/clip/807?view id=11&redirect=true

Discussion



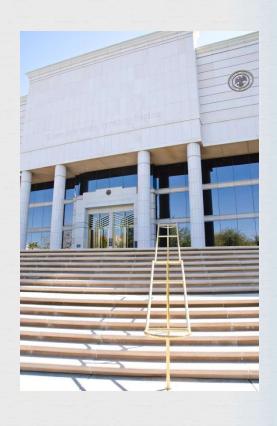
Exercises – Identifying Excellent Oral Advocacy

Case Example #2:

State v. Maciel

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Discussion



Exercises – Final Example



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Case Example #3: *State v. Murray*

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Recall the OA Outline we reviewed? Argument never goes as you anticipate – will always have to adjust accordingly

Self-Assessment



Every argument presents an opportunity to learn and grow – continuously developing the skill of oral advocacy

Watch or listen to your argument if it's available. (Painful, but a very useful exercise)

Celebrate your strengths and improve on areas where you need work; accept constructive criticism

Questions? Further Discussion?

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